IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE FOURTEENTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE Mr. JUSTICE C.V.RAMULU

WRIT PETITION No. 21430 of 1999

Between:

Chada Narendra Reddy S/o.Venkat Reddy
R/o Chada Village,Mothkur Mandal Nalgonda district.

..... PETITIONER

AND

1 Bhongir Coop.Central Bank Ltd.,
Bhongir, now merged in Nalgonda Dist.Coop

Central Bank, Nalgonda, rep.by its General Manager.
2 The Presiding Officer, Addl.Industrial Tribunal-Cum-Labour Court,
Hyderabad

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ, direction or order, more especially a writ in the nature of Certiorar calling for the records in M.P.No.1/81 in I.D.No.8/75 before the respondent No.2 and quash its order dt.19-9-1997 as being illegal, and consequently direct the respondent No.1 to reinstate the petitioner with back wages and all other attendant benefits and pass such other order or orders as this Hon'ble Court may deem fit and proper.

Counsel for the Petitioner: Mr. M.PANDURANGA RAO

Counsel for the Respondent No.1: Mr. T.Amarnath Goud

Counsel for the Respondent No.2: GP FOR LABOUR

The Court made the following :

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.No.21430 of 1999

ORAL ORDER:

This Writ Petition is filed seeking a Writ of Certiorari to quash the Order dated 19-9-1997 passed in M.P.No.1 of 1981 in I.D.No.8 of 1975 on the file of the 2nd respondent – Additional Industrial Tribunal-cum-Labour Court, Hyderabad - and for a consequential direction to the 1st respondent to reinstate the petitioner with continuity of service, with back wages and all attendant benefits.

Petitioner was appointed in the 1st respondent-Bank in the year 1959. While working as Branch Manager, he was issued with a charge sheet dated 22-5-1976 and was kept under suspension. Though he was suspended in the year 1976, an Enquiry Officer was appointed only on 24-2-1979. Enquiry Officer submitted a report holding the petitioner guilty of charge Nos.1,2,4,5 and 6. Charge No.3 was dropped by the management itself and charge No.7 was held to be not proved by the Enquiry Officer. Basing on the report of the Enquiry Officer, the services of the petitioner were terminated with effect from 8-1-1981. Since another Industrial Dispute was pending and during the pendency of that dispute, petitioner could not have been terminated without obtaining prior approval as required under Section 33(2)(b) of the Industrial Disputes Act,1947 (for short 'the Act'), petitioner filed a complaint under Section 33(A) of the Act before the 2nd respondent-Labour Court and the same was numbered as M.P.No.1 of 1981 in I.D.No.8 of 1975. Since complaint filed under Section 33(A) was required to be adjudicated upon as if it was a dispute referred to or pending before it in accordance with the provisions of the Act, a regular enquiry was taken up. The Labour Court initially found that the domestic enquiry conducted

by the management was not fair and as such, declared it as vitiated. The management was permitted to adduce additional evidence, if any, to substantiate the charges. In fact, the management examined M.Ws.1 to 4 and marked Exs.M1 to M34 and the petitioner-workman examined himself as W.W.1 and marked Exs.W1 to W3. Thereafter, the Labour Court passed an Award in M.P.No.1 of 1981 in I.D.No.8 of 1975 on 26-8-1993 holding that the charges levelled against the petitioner were rightly held to be proved and that the punishment of removal from service was just and proper. Aggrieved by the said Award, petitioner filed Writ Petition No.3583 of 1994 and the same was allowed by this Court on 19-6-1997 setting aside the Award observing that there was no consideration of the evidence on record and discussion as to the contentions of the parties and the matter was remanded 'for consideration afresh as per law after giving an opportunity of hearing to both the parties in the light of the material available on the record'. Therefore, the Labour Court has taken up the matter afresh for consideration and after considering the entire evidence, came to the conclusion that the petitioner was guilty of charge Nos.1,2,4,5 and 6 and the punishment of removal was modified to that of punishment of compulsory retirement. Aggrieved by the same, the present Writ Petition is filed by the workman.

A detailed counter affidavit is filed by the respondent-Bank denying the allegations made by the petitioner and supporting the impugned Award.

Heard both sides at length.

Sri M. Panduranga Rao, learned counsel for the petitioner, contends that 'consideration afresh as per law after giving opportunity of hearing to both parties in the light of the available material on the record' means, the Labour Court was supposed to look into the evidence, which was adduced before it by the management as well as the workman after the domestic enquiry was held to be vitiated. But, unfortunately, in the instant case, Labour Court construed that the material on record is also inclusive of the domestic enquiry conducted by the management and evidence led therein, apart from the evidence let in before it. Thus, the Labour Court after discussing the evidence, which was let in before the domestic Enquiry Officer and also before it after the enquiry was held to be vitiated, i.e. relying upon some portions of the evidence as available in the domestic enquiry conducted by the management as well as the evidence let in before it, came to the conclusion that charge Nos.1,2,4,5 and 6 were proved and the punishment of dismissal was modified to that of compulsory retirement. Learned counsel also submits that the

Labour Court cannot rely upon the evidence, which was let in during the domestic enquiry, which was held to be vitiated by the Labour Court. The only evidence, which the Labour Court ought to have taken into consideration was the evidence let in before it after the domestic enquiry was held to be vitiated and both the parties were given opportunity to lead evidence. Taking the evidence, which was let in before the Enquiry Officer into consideration is not permissible under law. In this regard, learned counsel for the petitioner drawn attention of this Court to a report Judgment in **NEETA KAPLISH v. PRESIDING OFFICER, LABOUR COURT** in which it was held as under:

> **"14.** Provisions of the Industrial Disputes Act were thus amended on the recommendation of the International Labour Organisation and Section 11-A was introduced in the Act by Parliament, wherein it was provided that the Tribunal had not only the power to set aside the order of dismissal and direct reinstatement of the workman, it had also the power to award lesser punishment. The proviso to Section 11-A, however, provided that the Tribunal would rely only on the material already on record and shall not take any fresh evidence.
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> **23.** In view of the above, the legal position as emerges out is that in all cases where enquiry has not been held or the enquiry has been found to be defective, the Tribunal can call upon the management or the employer to justify the action taken against the workman and to show by fresh evidence that the termination or dismissal order was proper. If the management does not lead any evidence by availing of this opportunity, it cannot raise any grouse at any subsequent stage that it should have been given that opportunity, as the Tribunal, in those circumstances, would be justified in passing an award in favour of the workman. If, however, the opportunity is availed of and the evidence is adduced by the management, the validity of the action taken by it has to be scrutinised and adjudicated upon on the basis of such fresh evidence.
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> **26.** The record pertaining to the domestic enquiry would not constitute "fresh evidence" as those proceedings have already been found by the Labour Court to be defective. Such record would also not constitute "material on record", as contended by the counsel for the respondent, within the meaning of Section 11-A as the enquiry proceedings on being found to be bad, have to be ignored altogether. The proceedings of the domestic enquiry could be, and were in fact, relied upon by the Management for the limited purpose of showing at the preliminary stage that the action taken against the appellant was just and proper and that a full opportunity of hearing was given to her in consonance with the principles of natural justice. This contention has not been accepted by the Labour Court and the enquiry has been held to be bad. In view of the nature of objections raised by the appellant, the record of enquiry held by the Management ceased to be "material on record" within the meaning of Section 11-A of the Act and the only course open to the Management was to justify its action by leading fresh evidence as required by the Labour Court. If such evidence has not been led, the Management has to suffer the consequences.

and submitted that the evidence already recorded during the domestic enquiry could not have been relied upon.

From the above, it is clear that once the domestic enquiry is found to be vitiated and the parties were allowed to adduce evidence, both oral and documentary, while considering the merits, the Labour Court cannot take into consideration whatever

evidence led during the domestic enquiry. Such an evidence cannot be said to be evidence on record as contemplated under Section 11A of the Act. This Court in Writ Petition No.3583 of 1994 while remitting the matter back held that the matter be considered afresh as per law after giving opportunity of hearing to both parties and in the light of material available on record. Therefore, the material available on record as per Section 11A of the Act is only the evidence let in by both the parties after the domestic enquiry was held to be vitiated. Therefore, it was not proper on the part of the Labour Court to again rely upon the evidence, which was let in the domestic enquiry. Unfortunately, in this case, in the Award under challenge, at paragraph-16, the Labour Court observed as under:

> "On reexamination before the Enquiry Officer, he (MW1) stated that the petitioner has sent Rs.2,400/- through the President Sri Kondaiah and Manager Sri Sangm Laxminarayana for crediting the amount to the society and that he advised them to credit the amount, and when they insisted on him to sign on voucher, he considered it for 2 days and refused to sign as it may implicate him. During the cross-examination by the petitioner, he further stuck to his point stating that the sum of Rs.2,400/- was sent to the petitioner through President Kondaiah, S.Laxminarayana…"

Labour Court further proceeded to hold that the above evidence undoubtedly established the petitioner receiving amount by forging the signature and an attempt was made by the petitioner's counsel to cross-examine V. Raghava Reddy before the Enquiry Officer as to certain irregularities of not obtaining vouchers and signatures on the office vouchers. Such a reliance on the findings recorded in the domestic enquiry were also noted in paragraph 32 of the impugned award, wherein it was stated as under:

> "……In such event, it is for the petitioner to explain this default. The entire evidence spoken to by this M.W.4 is supported by Exs.M8 to M12 and cash book and ledger and the evidence given by the daily collection agent before the enquiry officer which is marked as Ex.W26."

Likewise, the Labour Court partly relied upon the evidence let in the domestic enquiry and partly relied upon the evidence placed before it. Such a course of action is not open to the Labour Court to be adopted. The Labour Court was only supposed to look into oral and documentary evidence let in before it by both the parties and come to a conclusion on that basis. Since the Labour Court has not followed such a course of action, the impugned Award passed by it cannot be said to be valid.

Therefore, the same is set aside and the matter is remitted back for fresh consideration by the Labour Court. The Labour Court is directed to look into the evidence that was let in before it after the domestic enquiry was held to be vitiated earlier and not any other evidence. Labour Court is further directed to dispose of the matter within a period of three months from the date of receipt of a copy of this order. It is made clear that there is no necessity of permitting the parties to lead any fresh evidence, both oral and documentary, in this regard.

The Writ Petition is allowed to the extent indicated above and the matter is remanded to the Labour Court as stated supra. No order as to costs.

14-10-2004

prk

The Rule nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this the Thursday, Fourteenth day of October Two thousand and Four.

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The General Manager, Bhongir Coop.Central Bank Ltd.,
Bhongir, now merged in Nalgonda Dist.Coop

Central Bank, Nalgonda,.

2 The Presiding Officer, Addl.Industrial Tribunal-Cum-Labour Court,
Hyderabad

3. 2CCs to G.P. for Labour, High Court Buildings, Hyderabad (OUT)

4. 2CD copies